

REMARKS/ARGUMENTS

The Examiner is requiring restriction to one of the following groups:

- Group I: Claims 1–15 and 18, drawn to a flame-hydrolytically produced titanium dioxide powder;
- Group II: Claims 16 and 17, drawn to a process for the production of the flame-hydrolytically produced titanium dioxide powder; and
- Group III: Claims 19 and 20, drawn to sunscreen agents, a catalyst, a catalyst carrier, a photocatalyst, and an abrasive.

In response to the Restriction Requirement dated July 1, 2008, Applicants elect, with traverse, Group I, Claims 1–15 and 18, for examination.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be no serious burden placed on the Examiner if restriction is not required (MPEP § 803). Moreover, when citing lack of unity of invention in a national stage application, the Examiner has a burden of explaining why each group lacks unity with the others (MPEP § 1893.03(d)), i.e. why a single general inventive concept is nonexistent. The lack of a single inventive concept must be specifically described.

The Examiner has alleged that Groups II and III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical feature for the following reason:

“Claim 1 is anticipated or obvious over Zhang (U.S. Patent No. 7,217,407), which teaches a titania powder having a surface area ranging from about 40 to about 150 m²/g, and a minor proportion of aggregates (formed from primary particles) above 100 nm in diameter (col. 3, lines 15-27). Accordingly, the special technical feature linking Groups I-III (the titanium dioxide powder), does not provide a contribution over the prior art”

However, Annex B of the Administrative Instructions under the PCT, paragraph b (Technical Relationship), states:

“The expression “special technical feature” is defined in Rule 13.2 as meaning those technical features that defines a contribution which each of the

inventions, considered as a whole, makes over the prior art. The determination is made on the contents of the claims as interpreted in light of the description and drawings (if any).”

Applicants submit that the Examiner did not consider the contribution of the invention, as a whole, over the disclosure of the cited reference. Any determination in regard to unity of invention must be made in light of the description; no reference to the description was made in the Examiner’s assertion that the present claims lack unity of invention. Therefore, the Examiner has not met the burden necessary to support the assertion of a lack of unity of the invention.

Applicants also traverse that Restriction Requirement on the grounds that the Office has not applied the same standard of unity of invention as the International Preliminary Examination Authority. Applicants respectfully point the Examiner’s attention to the International Preliminary Report on Patentability and the Written Opinion of the International Searching Authority, filed herewith, where the Authority affirmed a unity of invention. Applicants note that PCT Article 27(1) states:

No national law shall require compliance with requirements relating to the form or contents of the international application different from or additional to those which are provided for in this Treaty and the Regulations.

For the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the requirement for restriction. Applicants therefore request that the requirement for restriction be withdrawn.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

Respectfully Submitted,

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